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HRL

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

FILED

JAN - 6 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

14 ELECTRONIC ARTS INC.,

Case No.

15 Plaintiff,

COMPLAINT FOR DECLARATORY
RELIEF

16 v.

[DEMAND FOR JURY TRIAL]

17 TEXTRON INC., BELL HELICOPTER
18 TEXTRON INC. and TEXTRON
19 INNOVATIONS INC.,

20 Defendants.

1 Plaintiff Electronic Arts Inc. ("EA"), through its attorneys, brings this action and alleges
 2 against Defendants Textron Inc., Textron Innovations Inc. and Bell Helicopter Textron Inc.
 3 (collectively "Textron") as follows:

4 **NATURE OF THE ACTION AND RELIEF SOUGHT**

5 1. EA brings this action for declaratory judgment and attorneys' fees to protect its
 6 right to develop, publish and sell computer and video games. EA's computer and video games
 7 are expressive works, entitled to full protection under the First Amendment. By this action, EA
 8 seeks a judicial determination that the identification and depiction of Bell-manufactured
 9 helicopters in the first-person military combat simulation *Battlefield 3* are protected by the First
 10 Amendment and the doctrine of nominative fair use. For these and other reasons, EA's
 11 expressive work does not infringe any trademark or trade dress held by Textron.

12 2. EA is one of the world's leading developers and publishers of computer and video
 13 games. Many of EA's games allow players to assume roles in realistic environments, such as the
 14 first-person military combat experience depicted in *Battlefield 3*. True to this realism,
 15 *Battlefield 3* contains images of a diverse array of weapons and vehicles used by soldiers in the
 16 modern United States military. These weapons and vehicles, including the Bell-manufactured
 17 AH-1Z, UH-1Y and V-22 helicopters, are identified using their military designations.

18 3. Textron claims to hold the exclusive trademarks and trade dress associated with
 19 the AH-1Z, UH-1Y and V-22 helicopters. Textron has asserted that EA's identification and
 20 depiction of its three vehicles in connection with *Battlefield 3* infringe Textron's purported
 21 trademark and trade dress rights.

22 4. EA's identification and depiction of the AH-1Z, UH-1Y and V-22 helicopters in
 23 *Battlefield 3* do not infringe any trademark or trade dress held by Defendants. The Bell-
 24 manufactured helicopters have artistic relevance to EA's expressive work and *Battlefield 3*'s use
 25 of them does not mislead customers as to the source or content of the work. EA's identification
 26 and depiction of the vehicles in the game are therefore protected by the First Amendment, just as
 27 they would be in any book or movie. Additionally, under the doctrine of nominative fair use,
 28 EA's work does not infringe Defendants' trademarks or trade dress because EA uses Defendants'

1 purported trademarks and trade dress only to identify the helicopters at issue.

2 5. The parties have been unable to resolve their present dispute.

3 6. Accordingly, EA seeks a declaration that the identification and depiction of the
4 AH-1Z, UH-1Y and V-22 helicopters in *Battlefield 3* do not infringe any trademark or trade
5 dress held by Defendants.

6 JURISDICTION AND VENUE

7 7. EA brings this action pursuant to the Declaratory Judgment Act, 28 U.S.C.
8 § 2201. It presents a federal question arising under the Lanham Act, 15 U.S.C. § 1051 et seq.
9 The Court has jurisdiction over this federal cause of action under 28 U.S.C. § 1331 (federal
10 question) and 28 U.S.C. § 1338(a) (trademarks).

11 8. EA is informed and believes, and on that basis alleges, that Textron Inc., Textron
12 Innovations Inc., and Bell Helicopter Textron Inc. have engaged in continuous and systematic
13 business in California and within this jurisdiction. Textron Inc., Textron Innovations Inc., and
14 Bell Helicopter Textron Inc. therefore have sufficient contacts with this district generally and, in
15 particular, with the events herein alleged, that they are subject to the exercise of jurisdiction of
16 this court over their persons.

17 9. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1391(c) because
18 substantial activity giving rise to the claims herein occurred in this judicial district.

19 10. Pursuant to Local Rule 3-2(c), this intellectual property case shall be assigned on
20 a District-wide basis.

21 THE PARTIES

22 11. Plaintiff EA is a corporation organized under the laws of Delaware, with its
23 principal place of business in Redwood City, California. EA develops and publishes computer
24 and video games.

25 12. Upon information and belief, Defendant Textron Inc. is a Delaware corporation
26 with its principal place of business in Providence, Rhode Island. Textron Inc. claims to own
27 purported trademarks and trade dress for the AH-1Z, UH-1Y and V-22 helicopters.

28 13. Upon information and belief, Defendant Textron Innovations Inc. is a Delaware

1 corporation with its principal place of business in Providence, Rhode Island. Textron
 2 Innovations Inc. claims to own purported trademarks and trade dress for the AH-1Z, UH-1Y and
 3 V-22 helicopters.

4 14. Upon information and belief, Defendant Bell Helicopter Textron Inc. is a
 5 Delaware corporation with its principal place of business in Providence, Rhode Island. Bell
 6 Helicopter Textron Inc. claims to own purported trademarks and trade dress for the AH-1Z, UH-
 7 1Y and V-22 helicopters.

8 FACTUAL ALLEGATIONS

9 EA's Expressive Work

10 15. EA is a leading developer and publisher of video and computing games. Among
 11 EA's works is *Battlefield 3*. A copy of the work for play on the PC is attached hereto as
 12 Exhibit A. EA released *Battlefield 3* on October 25, 2011.

13 16. *Battlefield 3*'s first-person, interactive combat simulation is built upon an original
 14 "ripped-from-the-headlines" story. Set in the year 2014, the game allows players to assume
 15 command of United States soldiers dispatched to stop a terrorist plot involving nuclear weapons
 16 near the Iran-Iraq border. The game realistically and authentically depicts modern-day armed
 17 conflict on land, in air and at sea. One of the ways *Battlefield 3* accurately depicts military
 18 combat is by giving game players control of the weapons, accessories and vehicles—from tanks
 19 and jeeps to jets and naval assault vehicles—used by the United States military. Among the
 20 more than twenty-five different modern-day vehicles built by a variety of manufacturers depicted
 21 in *Battlefield 3* are the Bell-manufactured AH-1Z, UH-1Y and V-22 helicopters.

22 17. *Battlefield 3* contains both single player missions and competitive or cooperative
 23 multiplayer actions supporting up to twenty-four players online. The missions and actions that
 24 comprise *Battlefield 3*'s "plot" are set in diverse locations around the globe including Paris,
 25 Tehran and New York. The outcome of a mission or action depends on the game player's
 26 choices and skill. As a result, no two game experiences are alike.

27 18. As a review of EA's expressive work demonstrates, EA's depiction of the Bell-
 28 manufactured helicopters is directly relevant to the game's storyline and is indistinguishable

1 from the reference and use of such vehicles in countless realistic war-themed books and movies.

2 19. Additionally, EA's depiction of the Bell-manufactured helicopters in its
3 expressive work in no way misleads consumers as to the source or content of the work. Nothing
4 in or related to the game contains any indication that Bell and/or Textron endorses the game or
5 has had a role in producing it. Indeed, the packaging of *Battlefield 3* contains an explicit
6 disclaimer that the depiction of any weapon or vehicle in the game does *not* indicate affiliation,
7 sponsorship or endorsement by any weapon or vehicle manufacturer. *See* Exhibit A. Moreover,
8 the Bell-manufactured helicopters are not highlighted or given greater prominence than any of
9 the other vehicles within the game.

10 **The Controversy Between the Parties**

11 20. Textron claims that it owns the purported trademark and trade dress for the AH-
12 1Z, UH-1Y and V-22 helicopters. Textron further claims that EA is infringing its trademarks
13 and trade dress by virtually depicting and identifying the Bell-manufactured helicopters in
14 *Battlefield 3*.

15 21. On December 21, 2011, Textron, through its litigation counsel, demanded that EA
16 immediately cease its depiction of the AH-1Z, UH-1Y and V-22 helicopters in *Battlefield 3* or
17 face legal action by Textron.

18 22. The parties have been unable to resolve their dispute regarding whether
19 *Battlefield 3* infringes Textron's trademarks and trade dress. EA therefore has a reasonable and
20 strong apprehension that it will soon face a trademark and/or trade dress action from Textron.

21 **FIRST CAUSE OF ACTION**

22 **Declaratory Judgment of Non-Infringement of Trademarks**

23 **15 U.S.C. § 1051 et seq.**

24 23. EA incorporates by reference the allegations in paragraphs 1 through 22 as if fully
25 set forth herein.

26 24. A real and actual controversy exists between the parties regarding whether EA's
27 identification and depiction of certain vehicles in its expressive work *Battlefield 3* infringe any of
28 Defendants' purported trademarks. The controversy is of sufficient immediacy and reality to

1 warrant declaratory relief under 28 U.S.C. § 2201. Following Textron's recent conduct, EA is
 2 faced with the choice of either abandoning its rights to develop, publish and sell its expressive
 3 work or risking liability for damages.

4 25. The controversy between EA and Textron thus demands specific relief through a
 5 decree that EA may identify and depict the AH-1Z, UH-1Y and V-22 helicopters in *Battlefield 3*
 6 without legal liability. The nature and extent of the adverse legal interests between EA and
 7 Textron are apparent, and the controversy is definite and concrete.

8 26. The Bell-manufactured helicopters depicted in *Battlefield 3* are just a few of
 9 countless creative visual, audio, plot and programming elements that make up EA's expressive
 10 work, a first-person military combat simulation. *Battlefield 3* and ancillary materials do not
 11 explicitly mislead consumers as to the source or origin of EA's works. The work also is not
 12 likely to cause any confusion, mistake, or deception among consumers, including as to the source
 13 or origin of the work or as to any affiliation, connection, association, sponsorship, or approval
 14 with or by Textron.

15 27. EA's identification and depiction of the AH-1Z, UH-1Y and V-22 helicopters in
 16 *Battlefield 3* are protected by the First Amendment and the doctrine of nominative fair use,
 17 among other defenses.

18 28. EA seeks a declaration that *Battlefield 3* does not infringe any of Textron's
 19 purported trademarks so that there will be no controversy clouding EA's right to continue
 20 developing, publishing and selling the work.

21 SECOND CAUSE OF ACTION

22 **Declaratory Judgment of Non-Infringement of Trade Dress**

23 **15 U.S.C. § 1125(a)**

24 29. EA incorporates by reference the allegations in paragraphs 1 through 28 as if fully
 25 set forth herein.

26 30. A real and actual controversy exists between the parties regarding whether EA's
 27 identification and depiction of certain vehicles in its expressive work *Battlefield 3* infringe
 28 Defendants' purported trade dress. The controversy is of sufficient immediacy and reality to

1 warrant declaratory relief under 28 U.S.C. § 2201. Following Textron's recent conduct, EA is
 2 faced with the choice of either abandoning its rights to develop, publish and sell its expressive
 3 work or risking liability for damages.

4 31. The controversy between EA and Textron thus demands specific relief through a
 5 decree that EA may identify and depict the AH-1Z, UH-1Y and V-22 helicopters in *Battlefield 3*
 6 without legal liability. The nature and extent of the adverse legal interests between EA and
 7 Textron are apparent, and the controversy is definite and concrete.

8 32. The Bell-manufactured helicopters depicted in *Battlefield 3* are just a few of
 9 countless creative visual, audio, plot and programming elements that make up EA's expressive
 10 work, a first-person military combat simulation. *Battlefield 3* and ancillary materials do not
 11 explicitly mislead consumers as to the source or origin of EA's works. The work also is not
 12 likely to cause any confusion, mistake, or deception among consumers, including as to the source
 13 or origin of the work or as to any affiliation, connection, association, sponsorship, or approval
 14 with or by Textron.

15 33. EA's identification and depiction of the AH-1Z, UH-1Y and V-22 helicopters in
 16 *Battlefield 3* are protected by the First Amendment and the doctrine of nominative fair use,
 17 among other defenses.

18 34. EA seeks a declaration that *Battlefield 3* does not infringe Textron's purported
 19 trade dress so that there will be no controversy clouding EA's right to continue developing,
 20 publishing and selling the work.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, EA respectfully requests this Court to enter judgment:

23 1. Declaring that EA's identification and depiction of the AH-1Z, UH-1Y and V-22
 24 helicopters in the expressive work *Battlefield 3* do not infringe Textron's purported trademarks;

25 2. Declaring that EA's identification and depiction of the AH-1Z, UH-1Y and V-22
 26 helicopters in the expressive work *Battlefield 3* do not infringe Textron's purported trade dress;

27 3. Enjoining Textron, its agents, attorneys, and assigns from asserting any trademark
 28 or trade dress claims against EA or any other person in connection with *Battlefield 3* or any

1 related product;

2 4. Declaring that this case is exceptional and awarding EA its reasonable attorneys'
3 fees and costs; and

4 5. Awarding any other relief the Court deems just and proper.

5 **JURY DEMAND**

6 EA hereby demands a trial by jury as to all issues triable before a jury.

7
8
9 Dated: January 6, 2012

KEKER & VAN NEST LLP

10
11 By: 

12 R. JAMES SLAUGHTER
13 R. ADAM LAURIDSEN
14 Attorneys for Plaintiff
15 ELECTRONIC ARTS INC.
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